

APR 03 2006

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

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**MARK ANTHONY KESTNER,**  
**Petitioner,**

V.

**WAYNESBORO CIRCUIT COURT,**  
**Respondent.**

**Civil Action No. 7:06-cv-00174**

## FINAL ORDER

**By: Hon. James C. Turk**  
**Senior United States District Judge**

In accordance with the written memorandum opinion entered this day, it is hereby

**ADJUDGED AND ORDERED**

that the above referenced petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, shall be and hereby is **DISMISSED** without prejudice for failure to exhaust state court remedies and is stricken from the active docket of the court.

The Clerk is directed to send a certified copy of this final order and the accompanying memorandum opinion to the petitioner.

ENTER: This 3<sup>rd</sup> day of March, 2006.

  
Senior United States District Judge